



POLICE DEPARTMENT

November 12, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Christopher Lesiewicz
Tax Registry No. 906635
19 Precinct
Disciplinary Case No. 2012-7351

The above-named member of the Department appeared before me on August 22, 2013, charged with the following:

1. Said Police Officer Christopher Lesiewicz, assigned to the 103rd Precinct, while off-duty, on or about April 21, 2012, within the confines of [REDACTED] County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer violated a valid [REDACTED] Temporary Order of Protection, Docket #2011SU030688. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department did not call any witnesses. The complainant in this matter, Respondent's [REDACTED] Person A did not testify. The Department entered into evidence Department's Exhibit (DX) 1 and 2.

DX 1 is a copy of a district court misdemeanor information in the case of the People of the State of New York vs. Respondent, dated April 23, 2012. In DX 1, Respondent was [REDACTED]. It was alleged that Respondent showed up at Person A's residence to attempt to pick up his children, in violation of a stay-away Order of Protection issued on July 5, 2011. The [REDACTED] was based solely upon information and belief, with the source being Person A.

DX 2 is a copy of a district court violation information in the case of the People of the State of New York vs. Respondent, dated July 3, 2011. In DX 2, Respondent was [REDACTED]. It was alleged that Respondent struck Person A twice in the upper right thigh with a car door, causing her pain and bruising. The [REDACTED] was based solely upon the Person A's personal knowledge.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, a 19-and-a-half-year member of the Department, is currently assigned to the 19 Precinct. He testified that on April 21, 2012 he received a set of

specifications indicating that he violated an Order of Protection. That day he drove to his [REDACTED]'s house, parked on the curbside, and waited for his two daughters to get in the car. According to Respondent, his [REDACTED] called the children back into the house before he could leave. Respondent testified that he did not exit his car and simply drove away. According to his testimony, he did not confront his [REDACTED] because he had been denied visitation before and simply thought he was not getting his children that day. The [REDACTED], on the other hand, told the Department investigators that he got out of the vehicle.

Respondent's Exhibit (RX) A, dated June 13, 2011, is an order from Judge James F. Quinn allowing him to visit his children. The order gave him parenting time every week and on Saturdays and Sundays alternating. RX B is an Order of Protection issued July 5, 2011, but Respondent testified that RX C, a Supreme Court order that allows for curbside pickup, supersedes this order. Respondent understands that he was permitted to pickup his children with the Supreme Court order. He also testified that Judge Bean told him that he is to be guided by that order. RX D is an Amended Order of Protection dated February 14, 2013, in which the term, "subsequent" was replaced by "valid," when the Order of Protection referred to any other order regarding child custody and/or visitation. RX E is another Amended order of Protection dated May 22, 2012.

The officers who arrested Respondent were friends of his [REDACTED], who is also a police officer, but from [REDACTED]. He testified to seeing them at barbecues and police functions. When his fingerprints were being taken, he mentioned to the officers that he has a valid Supreme Court order authorizing curbside pickup, but they told him they have no knowledge of it. Respondent testified that prior to being arrested, he was in the process of asking for full custody of his children because he is soon retiring and

would rather raise them himself than have a nanny do it. His [REDACTED] learned of his intention when Respondent's attorney told his [REDACTED]'s attorney. For the ten months before the arrest, Respondent never had any issue picking up his children at the curbside.

On cross-examination, Respondent confirms that the Judge told him that he still has the right to see his children regardless of the stay away order. When asked whether it is his professional opinion, as a police officer, whether someone with a stay away order is permitted to get close to the person he or she is supposed to stay away from, the Respondent answers that if the person has a valid order for visitation, then yes it is permitted.

On redirect examination, Respondent again testifies that he did not get close to his [REDACTED] as she was the only person on the stay away order he was not to approach.

FINDINGS AND ANALYSIS

Respondent stands charged herein in that he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he violated a valid [REDACTED] [REDACTED] Temporary Order of Protection.

Evidence adduced at trial established that Respondent was [REDACTED] Person A, for about ten years when their relationship started to deteriorate. Person A served Respondent with [REDACTED] papers about a year and a half after things began to unravel around April 2010. Within two to three months of being served with [REDACTED] papers, Respondent moved out of the [REDACTED] home.

Respondent testified that on June 13, 2011, he received a handwritten court order of visitation signed by the Honorable [REDACTED] of the [REDACTED] County Supreme

Court (RX A). In that order effective June 16, 2011 Respondent was granted curbside pickup and drop off of his two daughters. Respondent testified without objection that from June 16, 2011 and every month following until the April 21, 2012 date, he picked up his children curbside even while a temporary Order of Protection was in effect (not in evidence) barring him from contact with his [REDACTED]

Respondent also testified that shortly before the April 21, 2012 curbside pickup date, which is the date in question, he advised his attorney that he was nearing his retirement and that he would seek full custody of his children. He explained that his [REDACTED] and her paramour both worked and his daughters were with a nanny. He stated that once he retired, he would be in a position to raise his daughters himself. Respondent stated that he understood that this information was relayed from his attorney to his [REDACTED]'s attorney.

The next time he attempted a curbside visit on April 21, 2012, he was arrested shortly thereafter for violation of the Order of Protection. Respondent explained that his daughters came out to the car. The older daughter then said she forgot something and ran back to the house. Respondent observed Person A waving her hands in the doorway. The older daughter then returned to the car, took her sister and both girls went back to the house. Respondent testified that there were times when he was not given visitation and so he thought this would be one of those days. He then drove home. He said it was a Saturday. He went to work on Monday and was advised by the Queens South Investigations Unit that [REDACTED] had a warrant for his arrest for violation of an Order of Protection. Respondent asked for details, but was told they did not have any. He was also told that they had to surrender him to Suffolk County. Respondent was

driven to [REDACTED] where he was arrested, fingerprinted and put through the system.

Respondent acknowledged that he had received a full stay away order on July 5, 2011 (RX B). The order referred solely to Person A. It did not reference the children. The order stated in pertinent part: "Subject to any **subsequent** Supreme Court or Family Court Order of custody and/or visitation." (Emphasis added). When questioned during cross-examination as to what "subsequent" meant, Respondent testified that it meant any "existing" order. Respondent explained that the judge would read every line of the Order of Protection to him and he would have to agree to each portion of it. He said he recalled being told by judges when receiving such Orders of Protection that if he had a valid Supreme Court order [referring to custody or visitation] he was to be guided by that. Respondent testified credibly that he took this to mean that he could still have curbside pickup to enable visitation with his children.

Respondent denied the allegations that he approached Person A's residence or struck her with the car door. He gave unchallenged testimony that at no time on April 21, 2012 did he exit his vehicle, approach Person A or leave his car. His children came up to him curbside and then went back to the residence and he then left the driveway where he had been parked for curbside pickup. Respondent testified that this had been the procedure after the July 5, 2011 stay away Order of Protection had been issued during curbside pickups from June 2011 until April 2012, when he was arrested. There was no evidence presented before this Court to the contrary. It had been the procedure for ten months, almost a year until April 21, 2012, when Respondent felt Person A engaged in retaliatory action to his consideration of getting full custody of the children. Therefore, it

is the belief of this Court that the Supreme Court order of visitation granting curbside pick up and drop off contemplated the existence of the Order of Protection but meant for the two to coexist such that Respondent would stay away from his [REDACTED] but this would not preclude him from having visitation with his children.

The Assistant Department Advocate argued that Respondent technically violated the stay away Order of Protection because it contained the word “subsequent” when it referred to any visitation or custody orders. In addition, since Respondent never sought to modify the Order of Protection to obtain visitation, he should be found Guilty of the Specification. Respondent testified credibly before this Court without a challenge that he always had visitation even when the Order of Protection against his [REDACTED] was in effect and he felt this stay away order of July 5, 2011 was no different. The Court agrees. This fact is evinced by the subsequent amended Order of Protection that was issued in this matter; at no point were the names of Respondent’s children added to the Amended Orders of Protection.

In fact, the one term in the order, “**subsequent** [Emphasis added] order of custody or visitation....” was replaced by the word, “**valid.**” This is to insure that the prior issued Supreme Court Order of visitation would remain in effect and not be invalidated by the District Court stay away Order of Protection. No subsequent order of visitation was presented before this Court as proof that the original Order had been amended in any way. In addition, all subsequent, amended Orders of Protection (RX D and RX E) mirror the previous Order of July 2011 with respect to visitation rights and only the word, “subsequent” was replaced with “valid” as it pertained to the issue of visitation and/or custody. There is one exception, Respondent testified that he made an application before

the Court to allow him to possess his firearm while on duty in the Order of Protection that remains in effect to date (RX D); and that amendment was made.

Based on the above, and the fact that Respondent's [REDACTED]
[REDACTED], it is recommended that Respondent be found Not Guilty in this matter. Person A did not appear as a witness in this matter. Respondent complied with the two Orders as he understood them to be in coexistence one with the other. It is also recommended that all time, pay and benefits lost while on pretrial suspension related to this matter, from April 23, 2012 through May 13, 2012 (21 days), be restored to Respondent.

Respectfully submitted,

C. Daniels DePeyster
by *[Signature]*

Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED

[Signature]
NOV 25 2013
RAYMOND W. KELLY
POLICE COMMISSIONER